LeMond Cycling, Inc. v. Trek Bicycle Corporation Doc. 125

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LEMOND CYCLING, INC., Plaintiff, v. TREK BICYCLE CORPORATION, Defendant and Third-Party Plaintiff, v. GREG LEMOND, Third-Party Defendant.	Case No. 08-CV-1010 (RHK-JSM) TREK'S MEMORANDUM IN SUPPORT OF TREK'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES, TO DEEM FACTS ADMITTED, AND FOR EXPENSES

Trek Bicycle Corporation ("Trek") provides this memorandum in support of its motion for an order pursuant to Rule 37 compelling Plaintiff LeMond Cycling, Inc. and Third-Party Defendant, Greg LeMond (collectively "LeMond"), to respond to interrogatories and for an order pursuant to Rule 36 to deem facts admitted. Trek also moves pursuant to Rule 37(a)(5) for an award of costs and expenses.

Introduction

Trek served its Second Set of Written Discovery near the conclusion of fact discovery. Many of the requests were geared to focus the issues for dispositive motions and eliminate or identify evidentiary issues for trial. Instead of serving answers and responses that facilitate this effort, however, LeMond failed to respond in a meaningful way to Trek's contention interrogatory, merely reasserting the allegations in its Complaint and referencing all discovery. LeMond also failed to

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admit the authenticity of consumer and dealer emails and letters and blog posts, or to provide any facts to support a claim that any such materials were not what they purport to be. This refusal to admit that consumer comments in emails and blog posts are what they purport to be is especially surprising, because LeMond just filed a motion for summary judgment relying in part on these very consumer comments.

The parties have attempted to resolve their dispute over these issues, but have been unsuccessful. Therefore, Trek requests the Court enter an order to compel LeMond to respond fully to Interrogatory No. 11 and deem admitted Requests for Admission Nos. 1 and 4 or amend the answers thereto, and respond fully to Interrogatory No. 10.

Background

Trek served its Second Set of Written Discovery to LeMond Cycling, Inc. and Greg LeMond on May 8, 2009 one month prior to the close of fact discovery on June 8, 2009. (Decl. of Kristal S. Stippich, ¶ 1, Exh. 1) (hereafter "Stippich Decl.") This concluded nearly ten months of fact discovery that began with the parties' Rule 26 disclosures in August 2008. By the time LeMond's responses were due, over 26,000 pages of documents had been produced by the parties as well as numerous additional documents by third parties; at least sixteen fact depositions had been completed; and the parties were in the process of finalizing their expert reports. LeMond served a response on June 8, 2009, the day discovery closed. (*Id.*, ¶ 2, Exh. 2)[1] Through

[1] Although LeMond originally designated its entire Answers and Objections to Trek's Second Set of Written Discovery as "HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY," LeMond has

letters and a conference call, the parties resolved some of the discovery issues, but were unable to resolve others. (*See generally, id.*, ¶¶ 3-6, Exhs. 3-6) (letters exchanged between parties re meet and confer).

Argument

I. The Court Should Order LeMond to Respond Fully To Trek's Contention Interrogatory (Interrogatory No. 11).

As fact discovery drew to a close, and in order to prepare for dispositive motions and trial, Trek asked LeMond to specify which facts it now contended supported the claims in its Complaint. Thus, Trek served a contention interrogatory, asking:

> INTERROGATORY NO. 11:
> If you contend Trek materially breached its obligations under the Sublicense Agreement, provide a detailed factual and legal basis for your contention, as well as a reference to bates-stamped documents (where applicable) and other documents substantiating or relating to such contention, including without limitation:
>
> a. each way in which you contend Trek materially breached express contractual provisions, including a recitation of the specific provision(s) in the agreement;
>
> b. each way in which you contend Trek materially breached the duty of good faith and fair dealing; and
>
> c. each way in which you contend Trek materially breached its obligation to exert "best efforts" within the meaning of § 5.02 of the Sublicense Agreement.

(*Id.*, Exh. 1). Instead of providing meaningful answers that reflected the development and pruning of facts and allegations through discovery, LeMond responded by objecting and reasserting the statements in the Complaint:

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since undesignated all but the response to Interrogatory No. 13, which is not at issue in this motion. Thus, Trek did not file Exhibit 2 to this motion under seal, but left pages 11-12 blank.

> RESPONSE:
> Plaintiff incorporates by reference its General Objections. Plaintiff specifically objects to the degree that this Interrogatory invades attorney-client or work product privileges. Plaintiff further objects on the grounds that any response to this Interrogatory is pertinent to liability and is therefore appropriately addressed through the opinions of Plaintiffs experts which are not due until the date agreed upon by the parties regarding the exchange of expert reports. Subject to and without waiving its General and Specific Objections, Plaintiff reasserts all statements made in its Complaint as to its factual bases regarding Trek's material breach of express contractual provisions, material breach of the duty of good faith and fair dealing, and material breach of its obligation to exert best efforts within the meaning of § 5.02 of the Sublicense Agreement.

(*Id.*, Exh. 2) (emphasis supplied). In the meet and confer, LeMond contended this was "not an appropriate case for a contention interrogatory," asserted for the first time that the request was overbroad and unduly burdensome and, again, generally referred to "all of the depositions, expert reports, and other discovery available to Trek in this matter." (*Id.*, Exhs. 5-6).

LeMond's response is incomplete, evasive and nonresponsive. An interrogatory is not objectionable merely because it is a contention interrogatory. Rather, the Federal Rules expressly permit contention interrogatories. Fed. R. Civ. P. 33(a)(2) ("An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact[.]").

Indeed, contention interrogatories are favored by courts as an appropriate means to narrow and define the issues for trial "beyond what may be ascertained from the parties' pleadings." *Transclean Corp. v. Bridgewood Services, Inc.*, 77 F. Supp. 2d 1045, 1062 (D. Minn. 1999) (citing federal appellate case law), *aff'd in relevant part, vacated in part,* 290 F.3d 1364 (Fed. Cir. 2002); *Shqeirat v. U.S. Airways Group, Inc.*, 2008

WL 4232018, *4 (D. Minn. 2008) (contention interrogatories enable the propounding party to determine the proof required to rebut the responding party's claim or defense). Trek served its contention interrogatory after substantial discovery had already been completed.

Yet, LeMond has failed to identify the specific legal and factual bases of its claims. Mere reference to pleadings and all discovery, as LeMond did here, is insufficient. *See Mancini v. Insurance Corp. of New York,* 2009 WL 1765295, *2 (S.D.Cal., June 18, 2009) ("Mancini then makes a brief response and adds that all facts can be found within the entire universe of documents involved in the underlying litigation, including expert reports, discovery responses, pleadings and depositions. This is not an appropriate response to an interrogatory."); *Transclean Corp.*, 77 F. Supp. 2d at 1062 (holding that reference to allegations in pleadings were not a proper interrogatory response and suggestion that respondent's discovery somehow placed requesting party on notice of its contentions was merely an "elusive guessing exercise").

Referring to LeMond's 34-page, 162 paragraph Complaint does not narrow the issues for trial. The Complaint recites a laundry list of contractual provisions in descriptive fashion with few discrete factual assertions of how they were breached.[2]

[2] In LeMond's Complaint, under a heading entitled "The Agreement Between LeMond Cycling and Trek," LeMond cites to at least 12 contractual provisions. *LeMond Complaint,* ¶ 34 (minimum royalty provision); ¶ 35 (Sublicense Agt., section 13.02.01); ¶ 36 (Sublicense Agt., section 5.02 ("best efforts")); ¶ 37 (Sublicense Agt., section 5.01); ¶ 38 (Sublicense Agt., section 6.02 and section 6.03); ¶ 39 (Sublicense Agt., section 1.02 (territory)); ¶ 40 (Sublicense Agt., section 8.01); ¶ 45 (Sublicense Agt., section 2.02.01 and section 2.02.03); ¶ 46 (Sublicense Agt., section 5.03); ¶ 47 (Sublicense Agt., section 16.01)).

Many of the Complaint's factual assertions are made "upon information and belief,"[3] do not appear to be tied to any particular claim or include sensational allegations regarding Lance Armstrong and doping.[4]

As for LeMond's expert reports (which were designated "confidential" and thus are not filed with this motion), one expert does not opine on liability at all, but instead discusses amount of damages. The other expert states no explicit opinions on liability, but instead generally discusses the road bike market, LeMond sales and the performance of other brands. While Trek has been able to distill a few particularized contentions from that report, namely that: (1) Trek did not sponsor a professional cycling team and (2) Trek markets to dealers not consumers, the report does not tie them to any specific contractual provision or provisions nor indicate whether Trek's alleged liability is limited to these contentions. If these are LeMond's only two specific contentions, LeMond should say so instead of referencing all statements in his Complaint.

Finally, not only is LeMond's "overbroad and unduly burdensome" objection waived as untimely, *see* Rule 33(b)(4) (grounds not stated in timely fashion are waived), but conclusory objections are unavailing. *Mead Corp. v. Riverwood Natural Resources Corp.*, 145 F.R.D. 512, 515-16 (D. Minn. 1992) ("Courts have consistently held that an objection to a discovery request cannot be merely conclusory, and that intoning the ‘overly broad and burdensome’ litany, without more, does not express a valid objection. The party opposing discovery shoulders the burden of showing that discovery request is overly broad and burdensome … and the written objection must allege facts which demonstrate the extent and nature of the burden imposed by preparation of a proper response.”). Here, LeMond did not provide any factual information as to the amount of time or expense it would take to respond to this contention interrogatory. LeMond belatedly asserted in its letter that Trek’s request is “overbroad and unduly burdensome on its face because it seeks all facts in support of Plaintiff’s case, which would require a detailed narrative of Plaintiff’s case.” (*See* Exh. 6 to Stippich Decl.). However, as set forth *supra* at 3, Trek’s Interrogatory No. 11 does not seek “all facts in support of Plaintiff’s case” nor does it cover all (or even a significant amount) of the allegations of the Complaint, but rather seeks identification of the legal bases and facts in support of LeMond’s claims that Trek breached the agreement with LeMond. Therefore, Trek requests the Court to order LeMond to respond fully to Interrogatory No. 11.

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[3] After its recitation of the Sublicense Agreement section 8.01's "comparable lines of products" language, the Complaint makes a series of "upon information and belief" statements about Trek's marketing and promotion of "comparable lines of product." *LeMond Complaint*, ¶¶ 40-44. Moreover, many of LeMond's allegations with respect to Trek's efforts and/or conduct are made "upon information and belief." *See id.,* at ¶¶ 9-10; 109-110; 118-119; 121; 137-138.

[4] *See, e.g., LeMond Complaint*, at ¶¶ 12-22; 49-66; 90-101.

II. The Court Should Deem The Authenticity of Consumer and Dealer Emails, Letters and Blog Posts Admitted For Failure to Sufficiently Respond to Trek’s Requests for Admission Numbers 1 and 4.

Requests for Admission as to authenticity are a well-recognized method to authenticate documents and save resources. Rule 36 provides that

> any party may serve upon any other party a written request for the admission…of the truth of any matters within the scope of Rule 26(b)(1) … including the genuineness of any documents described in the request.

Fed. R. Civ. P. 36(a). Every rule in the Federal Rules of Procedure "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Rule 36 promotes these goals by facilitating "proof with respect to issues that cannot be eliminated from the case, and … [narrowing] the issues by eliminating those that can be." Fed. R. Civ. P. 36, Advisory Committee's Note (1970 amendment); *see also* 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure § 2252 (Current through 2009) (Rule 36 is "intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial.").

Rule 36 circumscribes the types of answers that can be made as to a Rule 36 request:

> If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

Fed. R. Civ. P. 36(a)(4). Any objections must be "specifically stated," and a party cannot "object solely on the ground that the request presents a genuine issue for trial." *Id.* at 36(a)(5). A party may move to determine the sufficiency of an answer or objection and

> [u]nless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.

Fed. R. Civ. P. 36(a)(6). Moreover, if a party

> who has served requests to admit is required to file a motion to compel in order to obtain answers to the requests, the provisions of Rule 37(a)(5) are applicable. *See* Fed.R.Civ.P. 36(a)(6). Rule 37(a)(5) states that if the court grants a motion to compel, or if the requested discovery is provided after a motion to compel has been filed, 'the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.' *See* Fed. R. Civ. P. 37(a)(5) (emphasis supplied). The award of expenses is mandatory unless the court finds that the moving party failed to confer in good faith with the responding party prior to filing the motion, the responding party's refusal to respond was substantially justified, or other circumstances make an award of expenses unjust. *Id.*

Kay v. Lamar Advertising of South Dakota, Inc., 2008 WL 5221083, *3 (D.S.D. 2008) (granting motion to compel regarding requests to admit and giving notice of intent to award movant's costs and attorney's fees). Likewise, a party who refuses to admit to authentication of a document, which the requesting party later proves genuine, may have to pay expenses and fees incurred in making proof. Fed. R. Civ. P. 37(c)(2).

This is an appropriate case for Rule 36 requests for admission. As the Court is aware, both parties rely on consumer feedback for their respective businesses. LeMond has made millions licensing his name to companies based on the idea that his association with a company and product would benefit sales. Trek sells its products to Independent Bicycle Dealers, whose businesses depend on consumer acceptance of products on their show room floors. Thus, it is not surprising that comments by consumers and dealers via emails and internet blog posts have been ubiquitous in this litigation. Both parties have referred to them in their complaints,[5] and the parties have exchanged hundreds of consumer and dealer emails throughout fact discovery.

Far from disputing the relevance or authenticity of these emails, LeMond relies on them in his Summary Judgment Motion filed just days ago. Multiple emails identified as "consumer comments" are attached as Ex. 20 to Jennifer Robbins Declaration in support of the motion. 7/10/09 Mem. of Law in Supp. of Pl.'s Mot. For Summ. J., at 9 (emphasis supplied).

Indeed, Greg LeMond himself in his Declaration in Support of Summary Judgment takes no issue with the authenticity of consumer comments but rather recognizes them as from consumers:

> In 2004, after publication of an interview I did, Trek claimed that it received a large volume of emails expressing a negative reaction to the article. I have seen these and the anonymous emails Trek publicly displayed during its April 8, 2008 press conference on several occasions. Trek has brought them out each time they have tried to persuade me not to speak on doping-related issues using the argument that I was damaging my brand. I have offered to provide responses to the individuals so that they know I am speaking from my heart and conscience and so that they have additional information about who I am, but Trek has not allowed me to. I receive supportive mail and believe that Trek does too, but that is not what they share when they make the repeated claim that my brand is being damaged by my stance on doping in cycling.

(Stippich Decl., ¶ 7, Exh. 7, Declaration of Greg LeMond, at ¶ 16) (emphases supplied).

LeMond showed comparable reliance on consumer emails during the deposition of Trek's President and CEO, John Burke. LeMond's counsel asked questions of Mr. Burke challenging Trek's decision to terminate the LeMond contract by pointing to letters and emails received by Trek that supported LeMond. For example, LeMond's counsel referred to TREK009594 as a letter from an "existing customer" (*see* Stippich Decl, ¶ 8, Exh. 8, Deposition of John Burke, at 119:22 and Exh. 138 thereto) (emphasis supplied), to TREK009583 as an email from a consumer (*id.*, at 122:4-5 and Exh. 139 thereto) ("Were you concerned, after receiving an e-mail such as this one, that consumers were…") (emphasis supplied) and even asked Mr. Burke if LeMond could post these emails on the Internet. (*Id.*, at 123:12-13) (emphasis supplied). Far from questioning the authenticity of emails, LeMond's counsel asserted (Trek believes incorrectly, though it is not important for present purposes) that the percentage of emails in favor of LeMond exceeded those in favor of Trek's decision to declare an end to the contract. (*Id.* at 126-127)

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[5] *See, e.g, LeMond Complaint*, ¶ 83; *Trek Counterclaim and Third-Party Complaint*, ¶¶ 21-23.

Trek likewise made use of consumer and dealer feedback in its pleadings, in its discovery, and in its expert reports. (*See, e.g.*, Stippich Decl., ¶ 9, Exh. 9, Expert Report of Dr. John Nevin at 8 – 13, summarizing consumer and dealer feedback).

Thus, in an attempt to narrow the issues now that discovery is nearly complete, and save time and resources over needless evidentiary disputes before and during trial, Trek asked LeMond whether it in fact challenged the authenticity of the consumer and dealer emails and letters and blog posts. Trek served the following requests for admission and interrogatory with respect to these consumer and dealer emails and letters and blog posts:

Requests For Admission As to Consumer and Dealer Emails and Letters

Instructions

For the purposes of Requests for Admission 1, 2, and 3, the term "Consumer and Dealer Emails and Letters" refers to the documents at bates TREK000054-480, TREK000483-485, TREK000490-638, TREK009464-9848, TREK0009850-9927, and TREK011951-11983.[6]

REQUEST NO. 1:
With respect to each of the Consumer and Dealer Emails and Letters, admit they are authentic documents pursuant to Rule 901 and 902.

RESPONSE:
Plaintiff incorporates by reference its General Objections. Plaintiff specifically objects that it is Defendant's burden, and not that of Plaintiff, to authenticate and provide evidentiary basis for documents that it has produced. Subject to and without waiving its General and Specific Objections, Plaintiff states that Plaintiff is without knowledge as to the authenticity of the Consumer and Dealer Emails and Letters, and is therefore not in a position to admit or deny their authenticity. Plaintiff further states that it believes that Trek is also without such knowledge.

Requests For Admission As to Blog Posts

Instructions

For the purposes of Requests for Admission 4, 5, and 6, the term "Blog Post" refers to the documents at bates TREK000481-482, TREK000486-489, TREK0009849, and TREK013842-13847.[7]

REQUEST NO. 4:
With respect to each Blog Post, admit they are authentic documents pursuant to Rule 901 and 902.

RESPONSE:
Plaintiff incorporates by reference its General Objections. Plaintiff specifically objects that it is Defendant's burden, and not that of Plaintiff, to authenticate and provide evidentiary basis for documents that it has produced. Subject to and without waiving its General and Specific Objections, Plaintiff states that

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[6] Trek has provided the court with a condensed version of these documents, omitting duplicates and putting them in chronological order by date, broken down by consumers (Stippich Decl., ¶ 10, Exh. 10), and dealers. (*Id.*, ¶ 11, Exh. 11).

[7] (Stippich Decl. ¶ 12, Exh. 12).

> Plaintiff is without knowledge as to the authenticity of the Blog Posts, and is therefore not in a position to admit or deny their authenticity. Plaintiff further states that it believes that Trek is also without such knowledge.
>
> INTERROGATORY NO. 10:
> With respect to all prior Requests for Admission, for each document concerning which you failed to provide an unequivocal admission, identify each such document by date and bates number, and provide all legal and factual bases for your refusal to so admit.
>
> RESPONSE:
> Plaintiff incorporates by reference its General Objections. Plaintiff further objects to this Interrogatory as unnecessary, overbroad, and unduly burdensome. Plaintiff incorporates by reference its responses and objections to Requests for Admission numbers 1 through 9.

With Trek's Requests for Admission Nos. 1 and 4, LeMond had the obligation in its answers to explain any challenges to authenticity. Instead, LeMond gave meritless objections and answers. Because LeMond's objections and answers are unjustified and LeMond has not brought forth a reasonable basis for challenging them as was its duty to do so, the Court should deem the authenticity of the consumer and dealer emails and letters (Request for Admission No. 1), and the blog posts (Request for Admission, No. 4) admitted.

A. LeMond's Objection that Authenticity is Trek's Burden is Meritless.

The requirement that documents be authenticated "is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims." Fed. R. Evid. 901(a). Trek served a simple set of requests for admission seeking an admission that the identified documents are what they purport to be—authentic emails and letters from consumer and dealers (in the case of Request for Admission No. 1) and blog posts (in the case of Request for Admission No. 4).

LeMond's only specific objection is that it is Trek's burden to authenticate these documents. While Trek does not dispute it has this burden, this does not form an appropriate basis for not answering the request. Rule 36 expressly provides for authentication of documents through requests for admission. Fed. R. Civ. P. 36(a). Moreover, courts reject such an objection. *Jones v. Boyd Truck Lines, Inc.,* 11 F.R.D. 67, 69 (W.D. Mo. 1951) ("[I]t should be clear that a request for admission of a fact, though it be as to a part of the burden of proof of a party to litigation…is not an improper one under Rule 36(a)[.]"); *Dulansky v. Iowa-Illinois Gas & Elec. Co.*, 92 F. Supp. 118, 124 (S.D. Iowa 1950) ("It is not proper to refuse to respond to a requested admission on the ground that the requesting party has the burden of proving the matters asserted therein.") (citing *Adventures in Good Eating, Inc. v. Best Places to Eat*, 131 F.2d 809 (7th Cir. 1942)). Thus, this Court should find LeMond's objection is not justified.

B. LeMond's Answer of Lack of Knowledge is Likewise Not Justified.

In addition, LeMond's answer that it is "without knowledge as to the authenticity of" the consumer and dealer emails and letters and blog posts, and "is therefore not in a position to admit or deny their authenticity" is likewise not justified. A party is not justified in providing an answer of lack of knowledge if that party attests to the truth of that fact in another context, *Johnson Int'l Co. v. Jackson Nat'l Life Ins. Co.*, 19 F.3d 431, 439 and 439 n.9 (8th Cir. 1994) (upholding award of attorneys fees in favor of requesting party where responding party refused to admit basic facts requested in Rule 36 requests, finding "inexplicable" and "not justified" refusal to admit when party had asserted facts as true in other context), or if there is no reasonable grounds for doing so. *Kay,* 2008 WL 5221083, at *5 (citing *Johnson Int'l*, at 19 F.3d at 438-39).

LeMond's avoidance of giving any answer to Trek's Requests for Admission Nos. 1 and 4 and Interrogatory No. 10, despite using emails in discovery and now in summary judgment indicates LeMond has no reasonable grounds to challenge authenticity. Thus, the Court should deem the requests admitted, or alternatively, order LeMond to file amended answers to Requests for Admission Nos. 1 and 4 admitting or denying with respect to each bates numbered document requested, and compel LeMond to fully and accurately answer Interrogatory No. 10. Notably, the response to Interrogatory No. 10 was nonresponsive because it merely referred back to the requests to admit (which were defective) and gave the conclusory objection of "overbroad and unduly burdensome," which as Trek argued, *supra* at 6-7, is an insufficient objection. *Mead Corp.*, 145 F.R.D. at 515-16.

III. The Court Should Order LeMond to Pay Trek's Expenses.

If the Court concludes that LeMond has failed to fully respond to Interrogatory No. 11 and failed to comply with Rule 36, Trek respectfully requests the Court order LeMond pay its fees and expenses in having to make this motion. Rule 37(a)(5) provides that if the motion is granted, the

> court must, after giving an opportunity to be heard, require the party … whose conduct necessitated the motion, the party or attorney advising the conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

Fed. R. Civ. P. 37(a)(5). None of the exceptions, under Rule 37(a)(5)(i-iii) for not awarding such fees applies, here, since (i) Trek has attempted in good faith to obtain responses and answers without court action, through letters and a telephonic meet and confer, (ii) LeMond's responses and answers are unjustified, and (iii) there are no other circumstances that would make an award unjust. Rather, LeMond's refusal to provide responses and answers has "clearly added unnecessary delay and expense to the litigation." *Johnson Int'l*, 19 F.3d at 439. Therefore, an award of Trek's expenses and fees is warranted.

CONCLUSION

The Court should order LeMond to fully respond to Trek's contention Interrogatory No. 11. In addition, because LeMond's objections and answers to Requests for Admission Nos. 1 and 4 are unjustified, the Court should deem the requests admitted. Alternatively, the Court should order LeMond to serve amended answers to Requests for Admission Nos. 1 and 4 and compel LeMond to fully and accurately answer interrogatory No. 10.

HALLELAND LEWIS NILAN & JOHNSON, P.A.

Dated: July 14, 2009

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